MA 54/07

(247)

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI JAGDISH BHALLA, Ag. C.J.
HON'BLE SHRI SATISH K. AGNIHOTRI, J.

Miscellaneous Appeal (PR) No. 1632 of 2007

APPELLANTS

1. Dr. Kamal Preet Singh, s/o. Shri Sukhdev Singh, aged about 29 years, presently posted as Additional Collector, Raipur (Chhattisgarh).

2. M.K. Gupta, s/o. Late D.L. Gupta, aged about 48 years, Town Planner, Municipal Corporation, Raipur, Malviya Road, Raipur, District Raipur (Chhattisgarh).

3. S.K. Agrawal, S/o. Shri Rajaram Agrawal, aged about 60 years, Tehsildar, Tehsil Office, Raipur, District Raipur (Chhattisgarh).

Vs.

RESPONDENT : Smt. Neelam Agrawal, wife of Bal Krishna Agrawal, aged about 35 years, Occupation – Business, R/o. 24, Doongaji Colony, Raipur, District Raipur (Chhattisgarh).

Appeal under Section 19 of Contempt of Courts Act 1971

Present : Shri Prashant Mishra, Senior Advocate with Shri Vivek Sharma, counsel for the appellants.

ORAL ORDER

(Passed on 1st August, 2007)

The following order of the Court was passed by **Hon'ble Jagdish Bhalla, Ag. C.J.**

This appeal arises out of orders dated 28-03-2007 & 02-05-2007 passed by Hon'ble Single Judge in the contempt petition. By order dated 28-03-2007 Hon'ble Single Judge has directed for

framing of charges on the basis of the fact that *prima facie* case for contempt was made out.

Shri Prashant Mishra, learned Senior Advocate submitted that since Hon'ble Single Judge by order dated 28.03.2007 has already recorded his finding, the order has become bad in law. In support, he relied upon the decision of Hon'ble Apex Court in **Modi Telefibres Ltd. and Others Vs. Sujit Kumar Choudhary and Others** (2005) 7 SCC 40 indicating the ratio in Paras 4 & 5 of the judgment as under:

> "4. After hearing the learned counsel for the parties and perusing the impugned order, we find that the Division Bench has committed gross error in overlooking the contents of the order of the learned Single Judge in which the finding has been recorded that the employer has committed contempt by not paying full dues of the workmen under the award.
>
> 5. Such an order of the learned Single Judge could not have been treated to be an interlocutory order the right of appeal denied to the appellant employer merely because the learned Single Judge had adjourned the contempt proceedings to enable the alleged contemnor to purge the contempt or else for deciding the quantum of punishment."

No other point has been pressed by learned counsel for the appellants.

After hearing learned counsel for the appellants, we find that Hon'ble Single Judge while dealing the contempt matter had not recorded any finding as argued on behalf of the appellants. Hon'ble

Single Judge *prima facie* was of the opinion that the charges can be framed, therefore he called upon the appellants to appear for framing of charges. It could have been contested by the appellants by filing response. The case referred hereinabove does not give any protection to the appellants for the reason that in the aforesaid case Hon'ble Single Judge of the High Court had recorded his finding and found that the contemnor was guilty of contempt, therefore had called upon the contemnor on the question of quantum of punishment, whereas in the instant case no finding has been recorded by Hon'ble Single Judge. Further, the appeal lies under Section 19 of the Contempt of the Courts Act, 1971. Section 19 of the Act is quoted as under :

> "*19 Appeals*-(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—
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> (a) where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the court;
>
> (b) where the order or decision is that of a Bench, to the Supreme Court;
>
> Provided that where the order or decision or decision is that of the Court of the Judicial Commissioner in any Union Territory, such appeal shall lie to the Supreme Court.
>
> (2) Pending any appeal, the appellate court may order that–
>
> (a) the execution of the punishment or order appealed against be suspended;
>
> (b) if the appellant is in confinement, he be released on bail; and
>
> (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section(2)

(4) An appeal under sub-section(1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

The appellants had an occasion to file response and contest the framing of charges, however, the appellants failed to file response. Although the charges have been framed, still the appellants have time to file their response before Hon'ble the Contempt Judge and contest the matter. From the perusal of Section 19 referred hereinabove, we are of the considered opinion that appeal lies only from the order of punishment whereas, the appellants have challenged the order calling upon the appellants to file their response in respect of framing of charges. Accordingly, it can be said that the appeal is not maintainable.

In the light of the above, no interference is warranted under this appeal. Accordingly, the writ appeal is dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Satish K. Agnihotri
Judge